

5-11-2017

State v. Briggs Appellant's Reply Brief Dckt. 44140

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 44140 & 44141
)	
v.)	MADISON COUNTY
)	NOS. CR 2014-2665 & CR 2015-2713
BRANDON BRIGGS,)	
)	REPLY BRIEF
Defendant-Appellant.)	
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REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MADISON**

**HONORABLE ALAN C. STEPHENS
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Following a consolidated jury trial covering two cases, the jury convicted Brandon Briggs of multiple sex crimes against minors. Mr. Briggs appealed, asserting in his consolidated appeal the district court violated his constitutional right to confront witnesses by preventing him from cross-examining the alleged victims on statements they made to him about their sexual contact with other adults and minors. Mr. Briggs asserted the district court's violation of his constitutional right to confront witnesses constituted fundamental error.

In its Respondent's Brief, the State argues Mr. Briggs has not shown fundamental error, because the excluded evidence was irrelevant. (*See* Resp. Br., pp.4-9.) This Reply Brief is necessary to respond to the State's contentions.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Briggs' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court violate Mr. Briggs' constitutional right to confront witnesses by preventing him from cross-examining the alleged victims on statements they made to him about their sexual contact with the persons identified in the Ruth Clark home?

ARGUMENT

The District Court Violated Mr. Briggs' Constitutional Right To Confront Witnesses By Preventing Him From Cross-Examining The Alleged Victims On Statements They Made To Him About Their Sexual Contact With Persons Identified In The Ruth Clark Home

Mr. Briggs asserts the district court violated his constitutional right to confront witnesses by preventing him from cross-examining the alleged victims on statements they made to him about their sexual contact with the persons identified in the Ruth Clark home. Prior to trial, Mr. Briggs's counsel asserted the evidence at issue was admissible under Idaho Rule of Evidence 412 to show the alleged victims' motive to lie. (*See generally* Tr., pp.48-55.) However, defense counsel did not articulate that the evidence was constitutionally required to be admitted pursuant to Rule 412(b)(1). *See Olden v. Kentucky*, 488 U.S. 227 (1988) (per curiam); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986); *State v. Araiza*, 124 Idaho 82 (1993). Because this error plainly exists and is not harmless, Mr. Briggs asserts the district court's violation of his constitutional right to confront witnesses constitutes fundamental error and may be reviewed by this Court. *See State v. Perry*, 150 Idaho 209, 228 (2010).

The State argues Mr. Briggs has not met any of the three prongs of fundamental error review, primarily on the basis Mr. Briggs has not shown a violation of unwaived constitutional rights. (*See* Resp. Br., pp.5-8.) The State contends, "[b]ecause the proposed evidence was irrelevant, there was no constitutional right to present it." (Resp. Br., p.8.) However, the evidence at issue was actually relevant to the alleged victims' motive to lie.

The State attempts to distinguish this case from *Van Arsdall*, arguing "[a]lthough the relevance toward bias of evidence that a state's witness [as in *Van Arsdall*] has had charges dismissed is self-evident, the relevance toward bias of the victims' sexual history is not." (*See* Resp. Br., p.6.) The State also attempts to distinguish this case from *Olden*, because the defense

in *Olden*, unlike here, was consent, and the reason to exclude evidence of the alleged victims' sexual history in this case was more legitimate than in *Olden*. (See Resp. Br., p.7.)

The State correctly notes (see Resp. Br., pp.5-6), that “[a]dmission of evidence of an alleged victim’s past sexual behavior is constitutionally required only in extraordinary circumstances,” and “[a] defendant has no right to present irrelevant evidence.” See *State v. Ozuna*, 155 Idaho 697, 702 (Ct. App. 2013). However, “the bias, prejudice, or motive of a witness to lie concerning issues presented in a trial is always material and relevant to effective cross-examination.” *Araiza*, 124 Idaho 82, 91 (citing *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). As the United States Supreme Court has put it, “the exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Davis*, 415 U.S. at 316-17.

Contrary to the State’s primary argument here, the evidence at issue was relevant to the alleged victims’ motive to lie. Specifically, it may be argued the lies in the instant case were born out of the alleged victims’ fear of jeopardizing their relationships with the stepfather of D.S. and J.S., and with the other identified persons in the Ruth Clark home. See *Olden*, 488 U.S. at 232. Further, the State conceded one of the alleged victims, D.S., had made statements to Mr. Briggs about doing “certain things” with one of the identified adults. (See Tr., p.50, Ls.20-23.) A jury might reasonably have found that furnished D.S. with a motive for favoring the prosecution in his testimony, out of a desire to cover up the sexual contact going on in the Ruth Clark home. See *Van Arsdall*, 475 U.S. at 679. Thus, the evidence at issue was relevant to the alleged victims’ motive to lie.

The district court, by precluding Mr. Briggs from exposing the alleged victims’ motive to lie, deprived Mr. Briggs of the opportunity for effective cross-examination. Thus, the district

court violated Mr. Briggs' constitutional right to confront the witnesses against him when it prevented him from cross-examining the alleged victims on the statements.

The State also argues Mr. Briggs has not met the second (that the error plainly exists) and third (that the error was not harmless) prongs of *Perry* fundamental error review. (*See* Resp. Br., pp.8-9.) Those arguments are largely dependent on the State's contention that the evidence at issue was irrelevant. (*See* Resp. Br., pp.8-9.) Because the evidence was actually relevant to the alleged victims' motive to lie, the State's arguments on the second and third prongs of fundamental error fail. As Mr. Briggs asserted in the Appellant's Brief (*see* App. Br., pp.15-17), the district court's error in violating his constitutional right to confront the witnesses against him plainly exists, and there is a reasonable possibility that the error in this case affected the outcome of his trial.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Briggs respectfully requests this Court vacate his judgments of conviction in both cases and remand the cases to the district court for a new trial.

DATED this 11th day of May, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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BPM/eas